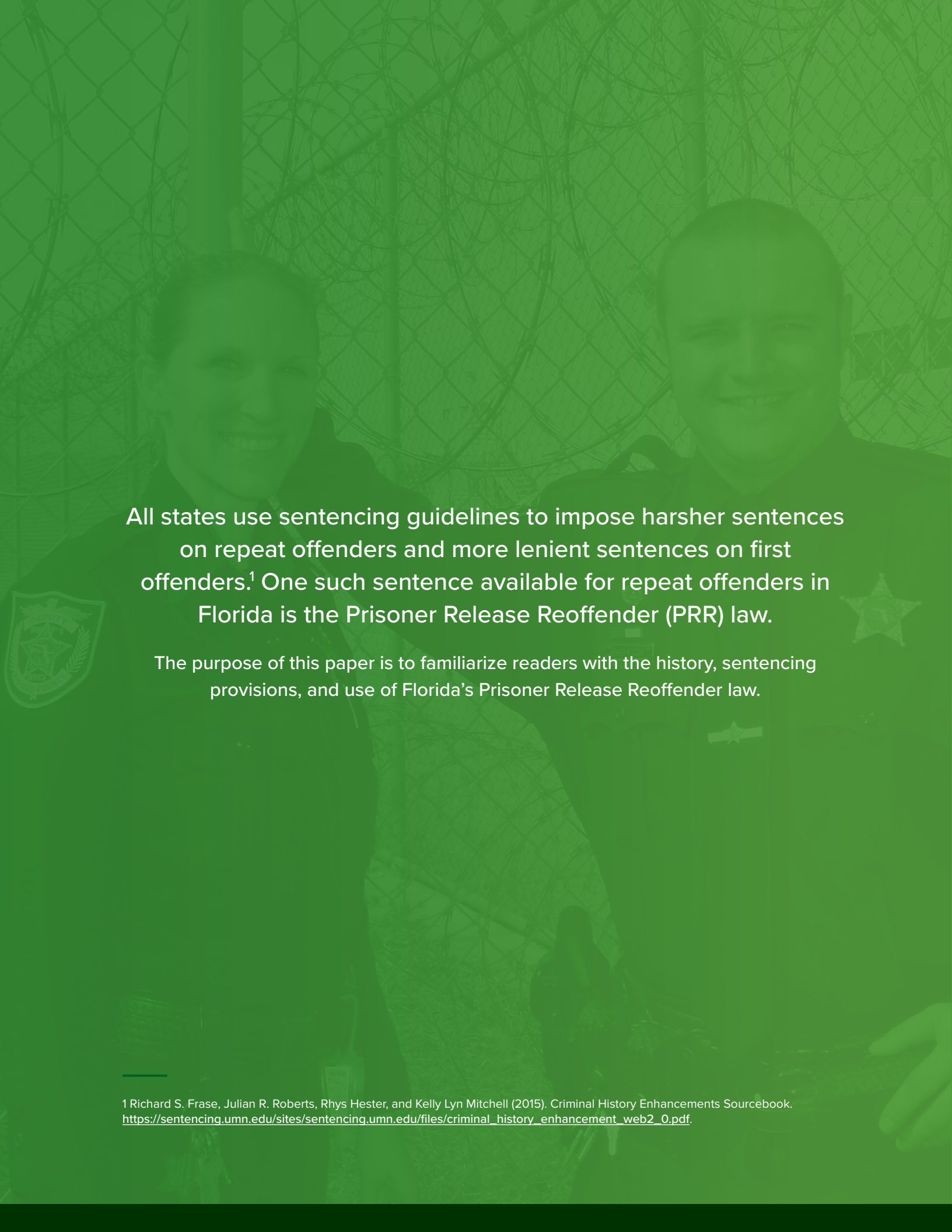


THE PRISON RELEASE REOFFENDER:

# SENTENCING REPEAT OFFENDERS OF VIOLENT AND SERIOUS CRIME IN FLORIDA

DECEMBER 2021





All states use sentencing guidelines to impose harsher sentences on repeat offenders and more lenient sentences on first offenders.<sup>1</sup> One such sentence available for repeat offenders in Florida is the Prisoner Release Reoffender (PRR) law.

The purpose of this paper is to familiarize readers with the history, sentencing provisions, and use of Florida's Prisoner Release Reoffender law.

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<sup>1</sup> Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell (2015). Criminal History Enhancements Sourcebook. [https://sentencing.umn.edu/sites/sentencing.umn.edu/files/criminal\\_history\\_enhancement\\_web2\\_0.pdf](https://sentencing.umn.edu/sites/sentencing.umn.edu/files/criminal_history_enhancement_web2_0.pdf).

# INTRODUCTION

Maintaining public safety is a primary goal of criminal sentencing. Florida's Criminal Punishment Code, established in state statute, sets the regulations for determining the length of a convicted offender's sentence and when the sentence is required to be served in state prison.

Most offenders are not sentenced to state prison until they have committed several serious or violent offenses.<sup>2</sup> Many offenders are redirected to diversion courts or sentenced to probation for the first offense or sometimes even several offenses. Nationally, just 23% of all persons convicted of crimes are in prison.<sup>3</sup>

Unfortunately, many offenders commit new crimes after being released from prison. Recidivism, though, is a complex issue that involves many social and economic factors beyond crime. Homelessness, the inability to secure employment, and a history of substance abuse have been recognized as factors that highly influence an offender to commit a new crime after being released from prison.<sup>4</sup>

A recent national report indicated 83% of prisoners released from 30 state prisons were arrested for a new crime at least once during the nine years following their release. The 401,288 state prisoners released in 2005 were rearrested for almost 2 million crimes within 9 years, an average of 5 arrests per released prisoner. About 25% of released prisoners committed half of these crimes.<sup>5</sup>

In Florida, the recidivism rate is about 25% within 3 years of a state prisoner's release. Within 5 years that number jumps to about 35%.<sup>6</sup> However, this analysis counts only prisoners who returned to prison and does not include those who were sentenced to county jail or other non-prison terms. Therefore, the actual recidivism rate in Florida is likely higher than the figure cited by Florida Department of Corrections (FDOC).

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2 Some offenses require a prison sentence for the first conviction, such as homicide and others that involve serious bodily injury or death.

3 U.S. Department of Justice (2020). Correctional Populations in the United States, 2017-2018. <https://www.bjs.gov/content/pub/pdf/cpus1718.pdf>.

4 See supra note 3.

5 U.S. Department of Justice (2018). 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014). <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

6 Florida Department of Corrections (2020). Florida Prison Recidivism Report: Releases from 2008 to 2018. [http://www.dc.state.fl.us/pub/recidivism/2019-2020/FDC\\_AR2019-20.pdf](http://www.dc.state.fl.us/pub/recidivism/2019-2020/FDC_AR2019-20.pdf).

# HISTORY OF PRR LAW

Florida's rising crime rate prompted the Florida Legislature to address the issue of repeat offenders after crime reached an all-time high nationally and in Florida in the late 1980s and early 1990s.<sup>7</sup> Judges had wide discretion in sentencing, which often resulted in lesser sentences for serious crimes and repeat, violent offenders. From 1987 to 1993, early release statutes resulted in the early release of over 200,000 inmates which reduced the average time served to only 34% of the originally imposed sentence.<sup>8</sup>

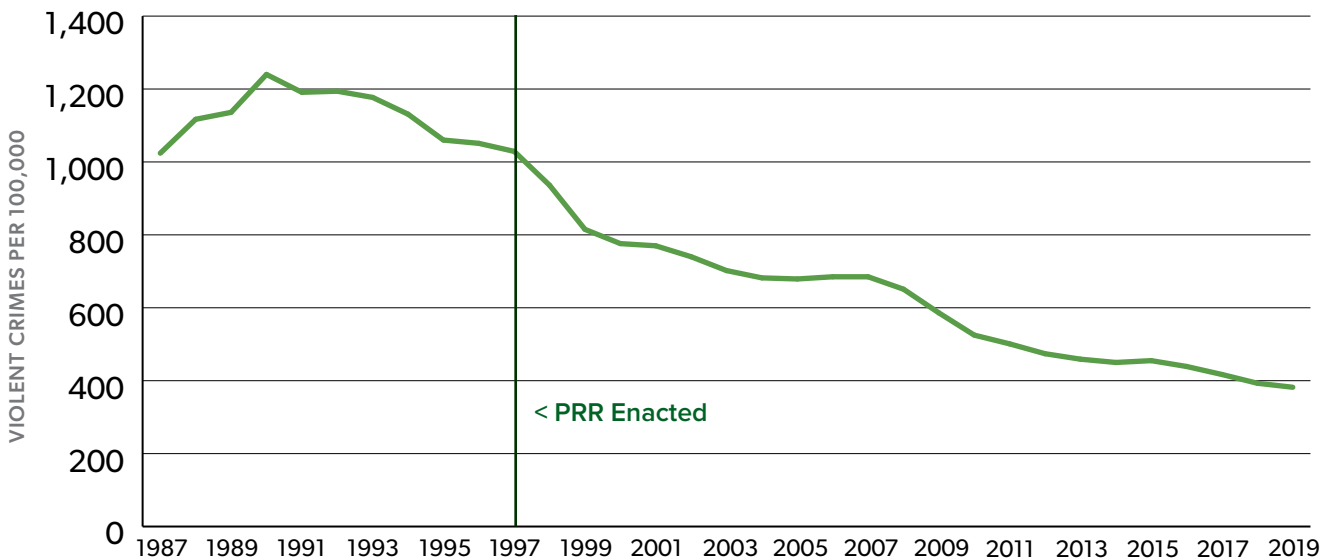
Florida's Prisoner Release Reoffender law was enacted in 1997 to address habitual, repeat offenders. These offenders, as demonstrated by their history of committing serious, felony crimes, pose a threat to the public. The PRR law passed the Florida Legislature unanimously and was signed into law by Democratic Governor Lawton Chiles.

Early estimates pegged the cost of the new law at \$1.6 billion for new prison construction and operating costs over a 10-year period. FDOC calculated that PRR would force the state to add another 7,000 prison beds by 2002 and another 7,000 prison beds by 2007, for a total of 14,000 prison beds just for PRR inmates. Those dire predictions never came to fruition and today there are less than half the amount of PRR inmates in state prison.

As House Justice Council Chairman Victor Crist stated at the time, "If 14,000 individuals getting out of prison are going to commit felony crimes, they deserve to go back in and stay in. We're talking the worst of the worst - criminals who are repeating felony crimes after spending time in prison, who are thumbing their nose at society."<sup>9</sup>

## Florida's Violent Crime Rate per 100,000

1987 – 2019



7 FBI Crime Data Explorer. <https://crime-data-explorer.fr.cloud.gov/explorer/national/united-states/crime>.

8 March 24, 1997 Florida House of Representatives Committee on Crime and Punishment Bill Research & Economic Impact Statement Bill #: CS/HB 1371 relating to Prison Release. <http://www.leg.state.fl.us/data/session/1998/House/bills/analysis/pdf/HB1371S1B.CP.PDF>.

9 Orlando Sentinel. May 10, 1997. '2 STRIKES' BILL MAY COST \$1.6 BILLION - Orlando Sentinel

# SPECIFICS OF THE PRR LAW



Inmates sentenced to PRR are not first-time, low-level offenders. The sentencing provisions of PRR do not apply to less serious misdemeanors or infractions, even when committed repeatedly.



In order to be sentenced under PRR, an individual must have previously committed one or more serious, felony crimes for which they served time in a state or federal prison or are on escape status. The offender must then commit or attempt to commit another felony within 3 years of their release from prison for the prior offense. If the offender commits a crime 3 years and 1 day after release, they would not be considered eligible for sentencing under PRR.



If a defendant is found guilty of a 2<sup>nd</sup> crime (which must be a forcible felony) during this 3-year window, the court must impose the statutory maximum sentence for that crime. Under the statute, if a person is determined to be a PRR and is found guilty of a forcible felony that is punishable by a 15-year sentence, the court must impose a 15-year sentence. If the person is found guilty of a forcible felony that is punishable by a life sentence, the court must impose a life sentence.



A person sentenced as a PRR must serve 100 percent of the sentence and is not eligible for parole or any form of early release.



The following is a list of some of the felony level crimes eligible to be charged as PRR:

- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Kidnapping;
- Aggravated assault with deadly weapon;
- Any violation of s. 790.07, F.S. (felons in possession of firearms);
- Any violation of s. 827.071, F.S. (sexual performance by a child).

*A full and detailed list of the provisions for PRR can be found in Florida Statute 775.082(9)(a)(1).*

# FLORIDA PRISON POPULATION ON PRR

During FY 2018-2019, 64,396 offenders were sentenced to the Florida Department of Corrections (FDOC). Of those, just 148 (<1%) were sentenced as a PRR.<sup>11</sup>

According to the FDOC, there were 7,459 inmates (9% of all inmates) serving a PRR sentence in Florida’s prisons as of September 1, 2020. These offenders accounted for 14,765 crimes when sentenced as a PRR offender. The actual number of crimes committed by incarcerated PRR offenders is higher since this does not account for crimes committed before the PRR conviction.

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The most frequent PRR offenses are identified below.

**TABLE 1:**  
MOST FREQUENT CRIMES COMMITTED BY PRR OFFENDERS

Offense	Total Offenses	Percent Total of All PRR Offenses	Most Frequent PRR Sentence
Burglary of an Occupied Dwelling	1,773	24.0	15 years
Armed Robbery	1,006	13.6	Life
2 <sup>nd</sup> Degree Murder	287	3.8	Life
Aggravated Battery with a Deadly Weapon	269	3.6	15 years
Aggravated Assault with a weapon	204	2.7	5 years
1 <sup>st</sup> Degree Murder	161	2.1	Life
All Other Offenses	3,686	50.2	

<sup>10</sup> Data provided by FDOC.

The FDOC has numerous programs to prepare inmates to re-enter society and reduce recidivism including academic, career and technical education, library services, and life skills programs. In FY2018-19, the state budget for these programs was \$57.5 million. Unfortunately, less than 10% of inmates participate.<sup>11</sup>

Training is also offered in modern high technology trades including print and digital information, garments and apparel, furniture manufacturing, vehicle renovation, metal fabrication, and dental and optical. In 2018, 86% of PRIDE-trained former inmates were placed into full-time jobs and only 9.9% of PRIDE's former workers recidivate. As with the FDOC programs though, just 4% of inmates take advantage of PRIDE programs.<sup>12</sup>

All of these programs are taxpayer funded and offered to prisoners at no cost.

But despite the availability and benefits of these programs, we must acknowledge that due to little interest and participation—as well as other complex issues that contribute to re-offending—the effect on the overall recidivism rate is minimal.

Those who favor sentencing reform suggest prisoners are not motivated to participate in rehabilitation programs because they do not significantly reduce the length of a prisoner's sentence.<sup>13</sup> They suggest allowing a greater reduction in sentence—perhaps as much as 35%—would encourage more participation and lower recidivism rates.

More often, low participation is based on a prisoner's unwillingness to engage in programs that require time and effort, the lack of willingness to accept responsibility, or poor motivation to change behavior.<sup>14</sup>

Florida is not alone in its efforts to address habitual offenders who repeatedly commit violent, serious crimes. Mandatory sentence policies targeting the most dangerous, repeat offenders are used in every state.<sup>15</sup>

Florida's crime rate is at a historically low level. Releasing habitual offenders early is a first step toward a return of the high crime that sparked Florida's Legislature to enact the Prison Release Reoffender law in the first place.

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11 FDOC Annual Report, 2018-19. [http://www.dc.state.fl.us/pub/annual/1819/FDC\\_AR2018-19.pdf](http://www.dc.state.fl.us/pub/annual/1819/FDC_AR2018-19.pdf).

12 See supra note 8.

13 Most prisoners can receive a sentence reduction of up to 15%. A person sentenced as a PRR must serve 100% of the imposed sentence. Although a PRR prisoner cannot receive a sentence reduction, they are still eligible to participate in prison programs.

14 Griffiths, C. T., Dandurand, Y., & Murdoch, D. (2007). The social reintegration of offenders and crime prevention (Vol. 4). <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/sci-rntgrtn/index-en.aspx>. Gideon, L. (2010). Drug offenders' perceptions of motivation: The role of motivation in rehabilitation and reintegration. *International Journal of Offender Therapy and Comparative Criminology*, 54(4), 597-610. Johnson, K. S. (2019). Examining The Internal & External Factors That Motivate Inmates' Participation Among Various Prison Programs. <https://egrove.olemiss.edu/cgi/viewcontent.cgi?article=2927&context=etd>.

15 National Conference of State Legislatures (2015). Making Sense of Sentencing: State Systems and Policies. <https://www.ncsl.org/documents/cj/sentencing.pdf>.

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**TABLE 2:****PRR OFFENDER PRISON COMMITMENTS**

Commitment	PRR Offenders Per Commitment	Percent of All PRR Incarcerated	Percent of FDOC Total Population
1 <sup>st</sup> Prison Commitment	154	2	< 1
2 <sup>nd</sup> Prison Commitment	3,003	40.6	3.6
3 <sup>rd</sup> Prison Commitment	1,917	25.9	2.3
4 <sup>th</sup> Prison Commitment	996	13.4	1.2
5 <sup>th</sup> Prison Commitment	577	7.8	< 1
6 <sup>th</sup> Prison Commitment	329	4.4	< 1
7 <sup>th</sup> Prison Commitment	211	2.8	< 1
8 <sup>th</sup> Prison Commitment	128	1.7	< 1
9 <sup>th</sup> Prison Commitment	71	1	< 1
10 <sup>th</sup> Prison Commitment	22	<1	< 1
11 <sup>th</sup> Prison Commitment	4	<1	< 1
12 <sup>th</sup> Prison Commitment	3	<1	< 1
13 <sup>th</sup> Prison Commitment	3	<1	< 1
17 <sup>th</sup> Prison Commitment	1	<1	< 1

**TABLE 3:****LENGTH OF THE MOST COMMON PRR SENTENCES**

Sentence	Total Offenses	Percent Total of All PRR Offenses
15 years	2,252	30.4
Life	2,034	27.5
30 years	1,016	13.7
5 years	813	11
20 years	336	4.5
All other sentences	935	12.6





THE CASE OF

# DONALD COTTERMAN

A TRAIL OF DESTRUCTION

Donald Cotterman was born Donald Lick, but changed his name after becoming a sex offender in 1994, presumably to avoid detection. Mr. Cotterman was under a prison sentence in 2012 and on work release when he and two others broke into a house in Wakulla County to steal firearms, jewelry, and electronics. Mr. Cotterman then pawned the stolen items in Leon County.

While his first trial was proceeding, his attorney witnessed him destroying evidence, resulting in that attorney being listed as a witness and subsequently discharged during the trial, requiring a mistrial. Before the second trial occurred, Mr. Cotterman and two other inmates escaped from the Wakulla County Jail. U.S. Marshals apprehended Mr. Cotterman months later in New Mexico, less than 50 miles from the Mexican border.

Law enforcement tracked Mr. Cotterman by identifying the crimes he committed across the country, as well as the social media accounts he used in attempts to engage minors in sexual activities. Mr. Cotterman created total havoc in the judicial system during the proceeding of his case, including tampering with witnesses; attempting to tamper with his first jury by contacting them and pretending to be the victims of his crime, offering a bribe to the jurors to find him guilty in order to have a mistrial charged to the State and therefore acquit him of his charges; and suing the prosecutor assigned to his case in federal court.

Finally, in 2019, Mr. Cotterman was convicted and sentenced to life in prison as a prisoner release reoffender. The PRR statute exists for people like Mr. Cotterman, who will never stop preying on other citizens.



THE CASE OF

# TONI BALL

A SERIOUS HABITUAL OFFENDER

A life sentence is a tough sentence and should not be taken lightly. However, during a Senate Criminal Justice Committee hearing during the 2021 legislative session a citizen advocate spoke in favor of SB 210, a bill that would have altered Florida's Prisoner Release Reoffender law. This citizen advocate painted a picture of inmate Toni Ball as someone who made a couple of minor mistakes and because of PRR now is serving a life sentence. The only aspect of his testimony that was accurate was the fact that Toni Ball is in fact serving a life sentence.

When you closely examine how many felony convictions Ms. Ball has had it is clear she was going to continue to prey upon our citizens. Before being sentenced to life in prison the State Attorney offered her 10 years in prison as a Habitual Felony Offender, but she declined and took her case to trial. She was then rightfully convicted as a prisoner release offender and sentenced to life in prison.

But that only tells a small portion of her criminal behavior. Before her life sentence, Toni Ball had an extensive felony criminal conviction record that the citizen advocate conveniently left out of his public testimony. Ms. Ball's prior felony criminal conviction record is as follows:

## ORANGE COUNTY

- Three convictions for grand theft of a motor vehicle.
- Three convictions for fleeing/eluding – high speed.
- Three convictions for burglary.
- Four convictions for felony driving with a suspended license.
- Two convictions for possession of cocaine.

## VOLUSIA COUNTY

- One conviction for felony driving with a suspended license.
- One conviction for burglary.
- One conviction for uttering a forgery.

## LAKE COUNTY

- One conviction for grand theft of a motor vehicle.
- One conviction for fraudulent use of personal identification information.

## SEMINOLE COUNTY

- One conviction for felony petit theft.
- Two convictions for uttering a forgery.
- One conviction for grand theft.

This is a total of 24 felony convictions, and when you add these felony convictions to her final felony convictions, for which she is currently serving a life prison sentence (burglary, grand theft, and possession of burglary tools & armed burglary of a dwelling and grand theft of a firearm), it is a total of 29 felony convictions. Considering she committed her final crimes in 2009 and 2010, she had 29 felony convictions in just over a decade.

Additionally, Ms. Ball committed her PRR offense on March 30, 2009 and she was released from her prior prison sentence on June 1, 2008. That is less than one year prior to her committing the PRR offense in this case. Ms. Ball had numerous disciplinary actions taken against her for violations committed in prison, such as possession of contraband, disobeying orders, spoken threats, fighting, obscene profane act, and disobeying regulations.

Toni Ball was not a simple low-level offender who made a couple of mistakes and is now serving a life sentence. Standing up in front of a Senate hearing and saying that is a gross distortion of the truth. Toni Ball was a menace in the community, and she ultimately made the decisions that put her in prison for the remainder of her life.





P. O. Box 12519 | Tallahassee, FL 32317-2519  
850-877-2165 | Toll free: 800-877-2168

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